



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 230410-0095; RTID 0648-XC711]

Pacific Halibut Fisheries of the West Coast; Management Measures for the 2023

Area 2A Pacific Halibut Directed Commercial Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes to implement harvest specifications and management measures for the 2023 non-tribal directed commercial Pacific halibut fishery that operates south of Point Chehalis, WA (46°53.30' N lat.) in the International Pacific Halibut Commission's regulatory Area 2A off Washington, Oregon, and California. Specifically, NMFS is proposing the 2023 directed commercial fishing periods and fishing period catch limits by vessel size class. The proposed action includes two 58-hour fishing periods for the directed commercial fishery. The first fishing period would begin at 0800 hours on June 27 and close at 1800 hours on June 29. The second fishing period would start at 0800 hours on July 11 and close at 1800 hours on July 13. Additionally, NMFS is proposing four catch limit apportionments across eight vessel size classes (A–H) for both fishing periods. These actions are intended to conserve Pacific halibut and provide fishing opportunity where available.

DATES: Comments must be received by [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2023-0006, by any of the following method:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov and enter NOAA-NMFS-2023-0006 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Scott M. Rumsey, Acting Regional Administrator, c/o Katie Davis, West Coast Region, NMFS, 500 W Ocean Blvd, Long Beach, CA 90802.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record and NMFS will post them for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Docket: This rule is accessible via the Internet at the Office of the Federal Register website at <https://www.federalregister.gov>. Background information and documents are available at the NMFS West Coast Region website at <https://www.fisheries.noaa.gov/west-coast/sustainable-fisheries/fisheries-management-west-coast> and at the Council’s website at <http://www.pcouncil.org>. Other comments received may be accessed through www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Katie Davis, West Coast Region, NMFS, (323) 372-2126, katie.davis@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The Northern Pacific Halibut Act of 1982 (Halibut Act), 16 U.S.C. 773-773k, gives the Secretary of Commerce (Secretary) general responsibility for implementing the provisions of the Convention between Canada and the United States for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Halibut Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). The Halibut Act requires that the Secretary shall adopt regulations as may be necessary to carry out the purposes and objectives of the Halibut Convention and Halibut Act. 16 U.S.C. 773c. The Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration (NOAA), on behalf of the IPHC, publishes annual management measures governing the Pacific halibut fishery that have been recommended by the International Pacific Halibut Commission (IPHC) and accepted by the Secretary of State, with concurrence from the Secretary of Commerce. These management measures include coastwide and area-specific mortality limits (also known as allocations and subarea allocations), coastwide season dates, gear restrictions, Pacific halibut size limits for retention, and logbook requirements, among others. The IPHC apportions allocations for the Pacific halibut fishery among regulatory areas: Area 2A (Washington, Oregon, and California), Area 2B (British Columbia), Area 2C (Southeast Alaska), Area 3A (Central Gulf of Alaska), Area 3B (Western Gulf of Alaska), and Area 4 (subdivided into 5 areas, 4A through 4E, in the Bering Sea and Aleutian Islands of Western Alaska).

Additionally, as provided in the Halibut Act, the Regional Fishery Management Councils having authority for the geographic area concerned may develop, and the Secretary of Commerce may implement, regulations governing harvesting privileges among U.S. fishermen in U.S. waters that are in addition to, and not in conflict with, approved IPHC regulations (16 U.S.C. 773c(c)). The Pacific Fishery Management Council (Council) has exercised this authority by developing a catch sharing plan guiding

the allocation of halibut across the various sectors and management of fisheries for the IPHC's regulatory Area 2A. At its annual meeting held January 22–27, 2023, the IPHC adopted an Area 2A fishery constant exploitation yield (FCEY) of 1.52 million pounds (689.46 mt) of Pacific halibut. NMFS published this catch limit and fishery allocations in the Federal Register on March 7, 2023 (88 FR 14066) after acceptance by the Secretary of State, with concurrence from the Secretary of Commerce, in accordance with 50 CFR 300.62. The FCEY was derived from the total constant exploitation yield (TCEY) of 1.65 million pounds for Area 2A, which includes commercial discards and bycatch estimates calculated using a formula developed by the IPHC. Based on this FCEY for Area 2A and the allocation framework in the Council's catch sharing plan, the IPHC also adopted a non-tribal directed commercial fishing allocation of 257,819 pounds (116.94 mt).

In previous years, the IPHC also issued commercial fishing licenses and promulgated annual management measures that established fishing periods and fishing period catch limits for the non-tribal directed commercial fishery that operates in Area 2A south of Point Chehalis, WA (46°53.30' N lat.). Fishing period limits were assigned by vessel size class based on the number of permits issued, the allocation, and prior year participation. Between 2017 and 2020, NMFS, the IPHC, and the Council discussed transitioning specific management activities of the Area 2A fishery from IPHC to NMFS as NMFS and the Council were seen as being able to better address the overlap of Pacific halibut management with domestic fisheries (e.g., groundfish and salmon).

Effective January 4, 2023, NMFS published a final rule that transitioned the Area 2A directed commercial fishery permitting and management activities from the IPHC to NMFS (87 FR 74322; December 5, 2022). The rule established the regulatory framework by which NMFS is proposing the following 2023 management measures for the directed commercial fishery.

2023 Directed Commercial Fishing Periods

Fishing periods are the time during the annual halibut season when fishing for Pacific halibut is allowed, and may span multiple days. At its November 2022 meeting, the Council discussed the 2023 directed commercial season structure and recommended that NMFS establish fishing periods consistent with their recent years' recommendations to the IPHC; specifically, that the directed commercial fishing season operate as a series of 3-day openings, beginning at 8:00 a.m. on the fourth Tuesday in June, and ending at 6:00 p.m. on Thursday of that week. Based on this recommendation, NMFS is proposing to open the 2023 directed commercial fishery for 58 hours, beginning on June 27 at 8:00 a.m. and closing on June 29 at 6:00 p.m. The second fishery opening would occur 2 weeks later, beginning on July 11 at 8:00 a.m. and closing on July 13 at 6:00 p.m. Following these two fishing periods, if the fishery has not attained nor is projected to have attained the directed commercial allocation, NMFS may determine that subsequent fishing period(s) are necessary to attain the allocation. Any additional fishing period(s) and applicable fishing period limits will be announced in the **Federal Register** through inseason action.

2023 Directed Commercial Vessel Limits

A fishing period limit, or vessel limit, is the maximum amount of Pacific halibut that may be retained and landed by a vessel during one fishing period. Each vessel may retain no more than the current fishing period limit of Pacific halibut for its vessel class, which is determined by vessel length. NMFS is proposing directed commercial fishing period limits based on the allocation for the directed commercial fishery in Area 2A and the number of permits issued by vessel size class, which is similar to the criteria the IPHC used to set fishing periods and fishing period limits. Vessel limits are proposed by vessel size class based on the number and sizes of the vessels for which permits were issued, as well as historical participation, and are intended to ensure that the Area 2A directed commercial fishery does not exceed the directed commercial allocation, while

also providing fair and equitable access across participants to an attainable amount of harvest. The 2023 Pacific halibut directed commercial fishery permit application deadline was February 14, 2023. NMFS received 154 applications across eight vessel size classes (A–H). If NMFS determines fishing period(s) in addition to those proposed in this rule is warranted, NMFS will set the fishing period limits equal across all vessel classes. If NMFS determines that the directed commercial fishery has attained its annual allocation or is projected to attain its allocation if additional fishing was to be allowed, the Regional Administrator will take action to close the fishery.

2023 Non-tribal Directed Commercial Fishery Management Measures

The Area 2A non-tribal directed commercial fishery south of Point Chehalis, WA (46°53.30' N lat.) would open on June 27 at 8:00 a.m. and close on June 29 at 6:00 pm and would open July 11 at 8:00 a.m. and close on July 13 at 6:00 p.m. The fishery may be adjusted inseason consistent with 50 CFR 300.63.

Table 1—Vessel Limits by Size Class for the 2023 First and Second Fishing Periods of the Area 2A Pacific Halibut Non-tribal Directed Commercial Fishery.

Vessel class	Length range (feet)	Fishing period limit (pounds)
A	1 – 25	2,716
B	26 – 30	2,716
C	31 – 35	2,716
D	36 – 40	4,092
E	41 – 45	4,092
F	46 – 50	5,454
G	51 – 55	5,454
H	65+	6,136

Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Council, the North Pacific Fishery Management Council, and the Secretary of Commerce. Section 5 of the Halibut Act (16 U.S.C. 773c(c)) allows the Regional Council, having authority for a particular geographical area, to develop regulations governing the allocation and catch of halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations.

This action is exempt from review under E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, for the following reasons.

For Regulatory Flexibility Act (RFA) purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (North American Industry Classification System (NAICS) code 114111) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$25 million for all its affiliated operations worldwide. The entities that would be affected by the proposed action are those vessels that harvest Pacific halibut as part of the non-tribal directed commercial fishery and are all considered small businesses under the above size standards.

This proposed rule, if adopted, would establish the 2023 Area 2A non-tribal directed commercial fishery management measures; specifically, the fishing periods and fishing period limits.

There are no large entities involved in the halibut fisheries off the West Coast. In 2022, the IPHC issued 202 licenses to the commercial fishing fleet for the Area 2A non-

tribal directed commercial fishery. Of those 202 vessels that obtained licenses, 39 percent (78 vessels) participated in the fishery. NMFS expects that a similar proportion of vessels will participate in the fishery this year and may be affected by these regulations. Cost data for the harvesting operations of non-tribal commercial halibut vessels is limited or unavailable. However, for 2022, the non-tribal directed allocation was 252,730 pounds (114.6 mt), of which approximately 250,674 pounds (113.7 mt) of halibut were harvested with an estimated ex-vessel value of approximately \$1.68 million. Therefore, NMFS considers all vessels affected by this action to be small entities.

Since this action will only impact commercial fishing vessels, which in the Pacific halibut fishery are small entities, none of these changes will have a disproportionately negative effect on small entities versus large entities. Because each affected vessel is a small business, this proposed rule is considered to equally affect all of these small entities in the same manner. Therefore, this rule, if adopted, would not create disproportionate costs between small and large vessels/businesses.

The major effect of halibut management on small entities will be from the Area 2A allocation decided by the IPHC; a decision independent from this proposed action. This action proposes fishing periods and fishing period limits for the 2023 non-tribal directed commercial fishery consistent with recommendations from the Council to provide commercial harvest opportunities under the allocations that result from the Area 2A catch limit determined by the IPHC. NMFS is proposing specifications that were established by the IPHC in previous years; any differences between the IPHC's management measures and those NMFS is proposing are considered minor, with minimal economic effects. Profitability is largely based on the Area 2A allocation decided by the IPHC, with subarea allocations determined based on the allocation formulae in the Council's catch sharing plan. Therefore, the proposed rule, if adopted, is unlikely to affect the profitability of the commercial fishery.

The Area 2A non-tribal directed commercial fishery allocation for 2023 is 257,819 pounds (116.94 mt) for 2023, which is 2 percent higher than in 2022. This proposed rule, if adopted, is unlikely to affect overall participation in the directed commercial fishery since this action maintains an allocation similar to previous years. Since profitability is dependent on the amount of allocation available and market forces independent of this action, it is highly unlikely that this allocation would limit the fleet's potential profitability from catching halibut compared to last season or recent catch levels. Accordingly, vessel income from fishing is not expected to be altered as a result of this rule as it compares to recent catches in the fishery, including under the previous season's regulations.

Based on the disproportionality and profitability analysis above, the proposed action, if adopted, will not have adverse or disproportional economic impact on these small business entities. As a result, an Initial Regulatory Flexibility Analysis is not required, and none has been prepared.

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act. There are no relevant Federal rules that may duplicate, overlap, or conflict with the proposed action.

Authority: 16 U.S.C. 773-773k.

Dated: April 10, 2023.

Samuel D. Rauch, III
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

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